

## Former Adelanto Mayor Kerr Indicted On Cannabis-Related Bribery Charges

By Mark Gutguck

Former Adelanto Mayor Rich Kerr was arrested today, August 13, by the FBI on a federal grand jury indictment alleging he accepted more than \$57,000 in bribes and kickbacks in exchange for approving ordinances authorizing various types of commercial marijuana activity within the city where he was mayor until December 2018, and ensuring his co-schemers obtained city licenses or permits authorizing certain commercial

marijuana activities.

Kerr, 64 of Adelanto, whose full name is Richard Allen Kerr, was taken into federal custody at his home without incident around 7:30 this morning. He is charged with seven counts of wire fraud and two counts of bribery.

Kerr made his initial appearance this afternoon in United States District Court in Riverside, where he was arraigned. He pleaded not guilty and was released upon the posting of a \$30,000 bond. He

did not waive his right to a speedy trial, which is set to begin on October 4.

According to the indictment returned on August 11, as part of his official duties, Kerr, who served as Adelanto's mayor from 2014 to 2018, voted on ordinances governing zoning regulations in the city and served on the Adelanto Cannabis Dispensary Permit Committee, which determined the number of dispensary permits that would be issued and which applicants would receive

them.

"Beginning on an unknown date, but no later than on or about November 23, 2015, and continuing until an unknown date but no earlier than on or about June 18, 2018, in San Bernardino County, within the Central District of California, and elsewhere, defendant Richard Allen Kerr, together with others known and unknown to the grand jury, knowingly and with the intent to defraud, devised, participated in, and executed a scheme

to defraud the City of Adelanto as to material matters, including by depriving the City of Adelanto of its right to the intangible right of honest services of defendant Kerr, namely, the honest performance of defendant Kerr's duties as mayor," the indictment states. "Specifically, defendant Kerr secretly used his official position to enrich himself and his co-schemers by: (1) passing ordinances authorizing various types of commercial marijuana activities, See P 2

## Well-Paid Perpetual Blunderer Puckett Back, This Time In Barstow



Marc Puckett

Marc Puckett, the well-traveled and controversial public official who has a demonstrated pattern of winning the confidence of elected officials, parlaying that confidence into a lucrative governmental position and then being forced out amidst scandal, has resurfaced once more in a municipal role in San Bernardino County.

Puckett is now serving as Barstow's finance director.

What was previously thought to be the end of Puckett's public career came more than three years ago, on December 28, 2017, when the Town of Apple Valley and Puckett signed a severance and departure agreement. Puckett and the town parted ways five months and eight days after Puckett infamously, on July 20, 2017, rear-ended a vehicle on Interstate 15 in Rancho Cucamonga and then left the scene of the accident such that the severely injured victim had to fend for herself. On December 5, 2017, the San Bernardino County District Attorney's Office had charged Puckett with involving himself in a felony hit-and-run. As Apple Valley's assistant town manager, he placed himself on voluntary paid administrative leave two days later. From his position as the town's assistant city manager and finance director, Puckett wangled himself a \$109,252 severance package, equal to six months salary. See P 3

## Judge Tentatively Mandates Upland To Do A Full EIR At Frontier Homes' Villa Serena

The terms upon which the Upland City Council approved Frontier Homes development of sixty-five single-family homes on 9.2 acres of property located within an existing flood control basin near a long established residential neighborhood must be rescinded, according to a Superior Court judge's tentative ruling which is likely to be finalized within the next month.

At the very least, accord-

ing to Judge David Cohn, Frontier Homes will need to complete a full-blown environmental impact report before the proposed Villa Serena project is constructed within a portion of a 32-acre percolation basin between 15<sup>th</sup> Street and 16<sup>th</sup> Street, roughly a quarter of a mile east of Campus Avenue in the northeastern quadrant of Upland, just north of a residential district within the City of Upland often referred to as

Foothill Knolls.

Complicating the issue is that in 1999 the City of Upland entered into a 25-point "streambed alteration agreement" with the California Department of Fish & Game, now known as the Department of Fish & Wildlife, that declared a portion of the percolation basin off limits to development. It thus appears possible if not indeed likely that if a new environmental certification process for the

Villa Serena project is undertaken, there will follow a reduction in the number of units to be constructed.

Under the California Environmental Quality Act, most development projects are subjected to an environmental certification process. Some types of environmental certification are more intensive than others, ranging from an environmental impact report to an environmental impact study to an environmental

assessment to an environmental examination to a mitigated negative declaration to a negative declaration.

An environmental impact report, the most involved type of environmental analysis and certification there is, consists of an involved study of the project site, the project proposal, the potential and actual impacts the project will have on the site and surrounding area See P 4

## Not Three Years In Office, Terral Resigns From Needles Council

Needles City Councilman Timothy Terral this week resigned from his elected position, some two years and eight months after assuming office in San Bernardino County's smallest and easternmost city.

After an unsuccessful attempt at capturing a council position in 2016, Terral was victorious in November 2018, placing

second among five candidates vying for three positions on the council.

Early in his tenure as a councilor, in Spring 2019 Terral sought state assistance in restoring the Needles Lagoon.

Terral and Needles Mayor Jeff Williams, a former sheriff's deputy and a concealed weapons permit holder, noted that California's stricter gun See P 5

## Upland City Council And Staff Playing Hide The Ball From Residents On Pension Obligation Bonds

Stealthily, Upland city officials this week took two crucial steps toward committing Upland residents to assuming \$130 million in bonded indebtedness intended to cover the city's existing and growing pension costs.

There are yet multiple questions about the city's intended issuance of pension obligation bonds that Upland officials have

sought to avoid answering, at least in part because they do not want to draw attention to the effort to qualify the city to issue the bonds, the process for which can over the next 30 days be challenged by the city's taxpayers.

In California, additional taxes are not to be levied unless they are first approved by a majority of voters who are to pay them.

Cities often use bonds as a type of funding for city operations and to defray the cost of civic improvements and infrastructure. A governmental entity will issue, or create, bonds and thereupon sell them at an amount equal to their face value at a specific interest rate to buyers. That governmental entity will then use the proceeds from the bond sales as it deems See P 10

## One Week After \$1M Payout To Shooting Victim's Family, FPD Releases Bodycam Video

In a development of significant historical and social note, the Fontana Police Department this week released the video from the bodyworn camera of its officer who fatally shot an unarmed burglar who had fled and hid after he was interrupted by the police during a home break-in.

The Fontana Police Department has a tradition of virulently protecting its officers from any second-guessing by the public with

regard to the way they conduct themselves in the field, a policy which has extended to the fatal shootings of civilians in the past as well as in cases where objective community standards suggest officers overstepped their authority.

A confluence of factors in this case, including extremes the department went to in its effort to keep the video under wraps and certain misrepresentations made by members of the

department in seeking to justify the shooting contrasted with a million dollar payout to the dead man's family, ultimately forced the department's hand.

The video captures the February 13 shooting of Daverion Deauntre Kinard by Police Officer Johnny Tuitivake.

There have been conflicting accounts provided by the department itself as to how the events leading up to the deadly confronta-

tion between Tuitivake and Kinard came about.

Two days after the event in February, the department said that on the evening of February 13, 2021, a resident of a home in the 16500 block of Casa Grande Avenue in north Fontana who was not present at the residence was alerted, through a video surveillance and digital relay and notification system, that there was an intruder on her property. The homeowner contacted

the police department, which dispatched officers, including one subsequently identified as Johnny Tuitivake, to the Casa Grande location.

However, yesterday the department released the audio of a 911 call in which an off-duty Los Angeles police officer and his wife, residents on Casa Grande Avenue, are heard telling a police dispatcher that a man in a black hoodie was apparently trying See P 3

## Federal Indictment Charts How Kerr As Adelanto Mayor Took Money From Marijuana-Related Business Applicants And Then Altered City Ordinances To Assist Them In Qualifying For Permits & Licensing *from front page*

including marijuana cultivation, marijuana distribution and transportation, and retail sales of marijuana via a dispensary; (2) drafting zones for commercial marijuana activities to include locations used by his supporters; and (3) ensuring his supporters obtained the licenses or permits they sought; all in contravention of conflict of interest prohibitions applying to defendant Kerr, and in exchange for bribes, kickbacks, gifts, payments, and other things of value.”

As mayor, Kerr supported marijuana legalization, voted in favor of an ordinance authorizing marijuana cultivation in the city, voted in favor of an ordinance authorizing the operation of medical marijuana dispensaries, and voted to authorize the distribution, transportation and testing of medical marijuana, among other commercial marijuana activities. At the same time, Kerr secretly used his official position to enrich himself and his co-schemers by passing those ordinances, the indictment alleges.

Kerr allegedly also drafted zones for commercial marijuana activities to include locations used by his co-conspirators, and he ensured they obtained the licenses and permits they sought in exchange for bribes, kickbacks and gifts, according to the indictment.

That Adelanto was on the FBI's, the DEA's, the IRS's and the U.S. Attorney's radar has long been known. Shortly after the 2014 election, in which Kerr, John Woodard and Charlie Glasper were elected in a clean sweep that displaced, respectively, former Mayor Cari Thomas and councilmen Charles Valvo and Steve Baisden, after the trio was installed on the council, Kerr and Woodard joined with Councilman Jermaine Wright, who had originally been elected to the council in 2012 and was reelected in 2016, to reinvent the financially challenged city of 34,000 as one embracing the social change afoot in California and elsewhere calling for the decriminal-

ization, and availability, of marijuana. Initially, Kerr, Woodard and Wright said they were interested only in taking advantage of the potential that had been created with the 1996 passage of Proposition 215, the Compassionate Use of Marijuana Act, which allowed the growing and sale of medical marijuana to create a revenue stream for the city. They would do that by allowing indoor cultivation of marijuana to be sold in dispensaries outside the city, they said, while continuing to prohibit the retail sale of marijuana within city limits. Suspicions were raised, however, when dozens of applicants filed into City Hall in 2015, many of them bearing briefcases full of cash, to apply for what was represented as a strictly limited number of operational permits. That frenzy intensified in 2016, even before the passage of Proposition 64 on that year's November ballot. That measure ratified California's Adult Use of Marijuana Act, which made, for those having achieved the age of 21, the use of marijuana for the plant's intoxicative effect legal.

There were unmistakable signs that graft was afoot in the city. In November 2017, Wright was arrested by the FBI after he accepted \$10,000 from an undercover FBI agent posing as an applicant for a marijuana distribution business, money which he took in exchange for an assurance that he would assist in keeping the city's code enforcement division from interfering with that business operation once it was up and running. In May 2018, the FBI served search warrants at City Hall, Kerr's home, at the Jet Room Marijuana Dispensary in Adelanto and at the San Bernardino office of the Professional Lawyers Group. Items seized included Kerr's cell phone and computers. The warrants obtained for those searches extended to Kerr's banking accounts, including his personal account with US Bank and the Navy Federal Credit Union account Kerr, as a former Marine, retained as a veteran.

According to the indictment, Kerr was being paid money by entities who were purchasing property in Adelanto with the intent of establishing marijuana-related and cannabis-related businesses thereon. Those providing the mayor with that money had a financial interest in the city widening its acceptance of such businesses, and ultimately, in exchange for the money he was receiving, Kerr used his elected position to do just that.

“On or about November 23, 2015, defendant Kerr voted in favor of Ordinance 539, authorizing medical marijuana cultivation in the city,” the indictment states. “On or about October 12, 2016, defendant Kerr voted in favor of Ordinance 548, authorizing the distribution, transportation, and testing of medical marijuana. On or about October 26, 2016, defendant Kerr voted in favor of Ordinance 553, an ordinance allowing medical marijuana dispensaries to operate in the city.”

The indictment does not identify by name those individuals and entities involved with Kerr in the graft described in the indictment, using instead Person A, Person B, Person C, Person D and Person E, as well as Law Firm A and Business A in its narrative. The *Sentinel* has been able to identify Person A, Person B, Person E, Law Firm A and Business A.

Kerr's alleged co-conspirators were David Serrano, a lawyer who specialized in plaintiffs' tort litigation – identified in the indictment as “Person A” – and two individuals – labeled “Person C” and “Person D” – who had business interests in the city, including those involving marijuana cultivation. The *Sentinel* has identified Person B as Manny Serrano, David Serrano's brother. Manny Serrano's activity, while tangential to that of David Serrano, according to what is described in the indictment, did not appear to have risen to the level of a criminal conspiracy. Person E has been identified by the *Sentinel* as Bill Rinker, a mechanic who worked in the motor pool with the City of Adelanto's public works department. Law Firm A is Professional Lawyers Group, San Bernardino, which is a law firm owned and controlled by David Serrano. Business, A, the *Sentinel* has

documented, is a marijuana dispensary operated out of a former restaurant/bar known as the “Jet Room, located at 17499 Adelanto Road, at the northeast corner of Adelanto Road and Joshua Avenue.

The bribes and kickbacks were disguised by Kerr and his co-schemers as gifts, donations to a charitable fund, donations to Kerr's election campaign, or advance payments for the proceeds of planned litigation associated with a motorcycle accident.

In exchange for the bribes and kickbacks, Kerr provided favorable official action on behalf of the city to David Serrano, Person C and other co-conspirators with business interests in the city by authorizing various types of commercial marijuana activities, ensuring his supporters obtained the licenses or permits they sought, and interfering with enforcement activities by city officials.

In one instance described in the indictment, on November 29, 2016, the Adelanto City Council held a public hearing related to an ordinance, including discussion of “overlay zones” within which medical marijuana dispensaries would be located. The initial proposal applied to two zones, neither of which included the Jet Room, which was located on a 2.23 acre lot, the entirety of which was purchased for \$450,000 from Dmitri Manucharyan by Serrano and his wife, Julia Oramaserrano, in a deal in which escrow was entered into on October 3, 2016 and finalized on October 11, 2016.

During the discussion, Kerr requested a change in the boundaries of the second overlay zone, which expanded the zone to include the Jet Room property. The plans for the business initially called for the building to be an attorney's office, although they ultimately included features that were inconsistent with a legal operation and more consistent with a dispensary, according to the indictment.

On December 5, 2016, Kerr deposited a \$5,000 check – dated November 29, 2016 – from David Serrano's real estate trust account into his bank account. The check's memorandum line read, “Adv Xmas Fund.”

In May 2017, Kerr voted twice in favor of a city

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ordinance that included Serrano's business in the marijuana dispensary overlay zone. In February, June and August of 2017, Kerr deposited three \$10,000 checks from Serrano's law firm, with the memorandum lines of each check stating, “Advance.”

Initially, representations were made that the Jet Room, which was vacant at the time David Serrano purchased it and had not been operational for more than a decade, was going to be converted into a law office.

With the dawn of 2017, however, that pretense was dropped. Manny Serrano, David Serrano's brother and the spokesman for the High Desert Cannabis Association, became actively involved in the plans for the Jet Room.

According to the indictment, “On or about February 15, 2017, Person A and Person B, a family member of Person A, submitted plans to the city's planning department to remodel the building. The plans called for the building to be an attorney's office, but they included items such as ‘elongated sales counters,’ a ‘dispensing room,’ ‘cashier,’ and ‘security room.’ On or about February 28, 2017, defendant Kerr deposited a \$10,000 check from Law Firm A into his US Bank account. The memorandum line of the check stated, ‘Plaintiff Advance.’ On or about May 17, 2017, the city council heard the first reading of a revised Ordinance 553 and Ordinance 557, with General Plan Amendment 17-03, which included Business A in a dispensary overlay zone, as discussed on November 29, 2016. Defendant Kerr voted in favor of both revised Ordinance 553 and Ordinance 557, with

General Plan Amendment 17-03. On or about May 24, 2017, the city council heard the second reading of revised Ordinance 553 and Ordinance 557, with General Plan Amendment 17-03. Again, defendant Kerr voted in favor of both revised Ordinance 553 and Ordinance 557, with General Plan Amendment 17-03.”

Kerr and David Serrano used a lawsuit that Serrano's firm had filed on behalf of Kerr in January 2019 naming the Adelanto Grand Prix, Malcolm Smith Racing, the American Motorcycle Association, the Big 6 Grand Prix Series and SoCal MC as a means of laundering kickbacks provided to Kerr by Serrano. That suit grew out of a motorcycle accident Kerr was involved in on January 14, 2017, in which he sustained a broken collarbone, several crushed, bruised or broken ribs and a partially collapsed lung during the first day of the two-day Adelanto Grand Prix racing event at Stater Bros. Stadium held over the January 14/15, 2017 weekend. The basis for the suit fell under question almost immediately, as the accident did not occur within the stadium, owned by the city, where the event was being held, but rather in the desert area outside it. For Kerr and Serrano, the legitimacy of the suit and prospect for its success were not at issue, as the lawsuit's purpose was to provide a cover for Serrano providing payments to Kerr, which were disguised as advances on the future settlement of the lawsuit.

According to the indictment, “Person C” and “Person D” had business interests in and out of the city, including business in-

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## Judge Kiboshed Puckett-Led Apple Valley Charge To Issue \$150 Million In Bonds & Use Eminent Domain To Commandeer H<sub>2</sub>O Company *from front page*

Ultimately, in March 2018, Puckett's lawyer worked out a plea deal for him in which he accepted a misdemeanor conviction, which imposed a 30-day stint in county jail, being placed on probation until 2022, paying \$25,000 restitution to the victim and sustaining a fine of \$4,339. The way it worked out, Puckett served just 15 days of that 30-day sentence.

The hit-and-run was not the last nor even worst legacy of Puckett's seven-year tenure in Apple Valley.

Puckett had been hired by Apple Valley as the town's finance director in 2011, and from shortly thereafter, then-City Manager Frank Robinson increased Puckett's span of responsibility to the point that before 2012 dawned, Puckett was serving as the town's de facto assistant municipal manager. Some time later, Puckett was given the assistant town manager title to augment that of finance director.

Given his command of the town's financial affairs, Puckett was considered indispensable to Apple Valley's operations.

The Apple Valley Ranchos Water Company, which was previously owned by the Wheeler Family Trust/Park Water Company, had been the primary purveyor of water to the Town of Apple since 1945. In 2010, Park Water made \$2.4 million in upgrades to Apple Valley's water system. The Carlyle Group, an American/multi-national private equity and asset management corporation, acquired Park Water Company, thereby taking possession of the Apple Valley Ranchos Water Company, in 2011. In 2011 the Carlyle Group undertook and completed \$3.4 million in capital improvements to the Apple Valley Ranchos Water Company; and another \$5.7 million in work on the system in 2012. In 2012, Park Water, at the direction of the Carlyle Group, obtained from the California Public Utilities Commission permission to institute 19 percent rate

increases on Apple Valley Ranchos's customers to carry out what was said to be necessary upgrades to the aging equipment and facilities that delivered water to the 74.99-square mile town's then-70,000 residents. Park Water Company/the Carlyle Group made another \$7.5 million in upgrades to the Apple Valley water system in 2013; \$8.1 million in improvements in 2014; and \$7.8 million in maintenance and additions in 2015. Thereupon, the Carlyle Group obtained from the California Public Utilities Commission clearance to institute another 30 percent rate hike on Apple Valley Ranchos customers to be implemented from 2015 until 2017. As town residents began to chaff under the 19 percent water rate hike followed by the 30 percent increase, town officials, including Puckett, grew concerned.

Collectively, town management and the town council hit upon purchasing the Apple Valley Rancho Water Company outright from the Carlyle Group. Having convinced themselves, in part based upon Puckett's calculations and in part on what Puckett said was the outcome of a survey by "an independent appraisal firm" that a "fair purchase price" for Apple Valley Ranchos was \$45.54 million, town officials began a serious discussion of raising the necessary capital to effectuate a buyout of the water company. The town subsequently indicated to the Carlyle Group it would be willing to pay Park Water the somewhat unrealistic figure of \$50.3 million for the Apple Valley Ranchos water system lock, stock and barrel.

The Carlyle Group, certain that its Apple Valley assets were worth far more than what the town was prepared to offer, spurned the town's efforts to engage them in a dialogue relating to a sale. Meanwhile, the Carlyle Group was entertaining buyout offers with regard to its water holdings from other private investors. The Carlyle Group ultimately packaged a sale of the entirety of the water utilities it owned in California, consisting of Apple Valley Ranchos, the water system in Yermo and the water system serving Compton, Downey and Bellflower in Los Angeles County, along with the water assets it owned in

Montana, consisting of the Mountain Water Company, the municipal water system serving Missoula. Labeling the entirety of the water works in California and Montana as Western Water Holdings, the Carlyle Group moved toward the final stage of selling them to a Canadian company, Algonquin Power/Liberty Utilities, for \$327 million.

The town, led by Robinson and Puckett and advised by its legal team at Best Best & Krieger, challenged the sale before the California Public Utilities Commission, insisting that the town was interested in purchasing the water system in Apple Valley and would utilize the eminent domain process, if need be, to do so. The town implored the state to consider the public benefit of allowing Apple Valley to purchase the town's water system.

Ultimately, the California Public Utilities Commission in December 2015 voted to allow Liberty to proceed with the acquisition of Park Water Company.

After Liberty/Algonquin took possession of the town's water assets, Apple Valley officials moved forward with an eminent domain action aimed at seizing the water company, filing its takeover suit in San Bernardino Superior Court on January 7, 2016.

For all of 2016 and most of 2017, Puckett served as the point man on the town's efforts to engage in what was essentially an attempt at a hostile takeover of Liberty Utilities, which is the name the town's water purveyor functions under. Robertson, Puckett, Best Best & Krieger and the town council intended that effort to be an administrative tour-de-force, with legal and financial components.

Because of the hit-and-run debacle, Puckett absented himself from Apple Valley at the end of 2017. The town's attempted takeover of the Apple Valley Ranchos Water Company, which Puckett had choreographed, lived on for another nearly three-and-a-half years, as a tribute to his unique brand of high-priced incompetence.

After more than three years and nine months of legal sparring, the matter came to trial before Judge Donald Alvarez on October 23, 2019. After the 67-

day trial which involved several suspensions and delays which were ultimately exacerbated by the COVID-19 crisis, the parties engaged in an extensive post trial briefing schedule followed by closing oral arguments. The matter was taken under submission, and on Friday, May 7, 2021, 18 months and 15 days after the trial began, Judge Alvarez entered his tentative decision, which was locked in on May 22, 2021.

Alvarez's findings were devastating to Apple Valley.

Alvarez rejected the town's effort to seize the water company, holding that, "The town cannot justify its right to take the system based on the possibility of a future plan to modify the system or its operations. Liberty has rebutted the presumptions that the public interest and necessity require the project and that the project is a more necessary public use of Liberty's property. The preponderant evidence at trial shows that the public interest and necessity do not 'require' the town's acquisition and operation of the Apple Valley Water System."

Alvarez found, "Liberty has operated a safe and reliable water system; allowing the town to acquire it would create substantial risks to continued effective operations. Liberty has a highly skilled work force that has operated the system with a perfect water quality record. The town's plan for operating the water system presents potential risks to public health and safety."

The town engaged in a disingenuous/intellectually dishonest effort to discredit Liberty, Judge Alvarez indicated. The town asserted that Liberty had put homes located below two heavy capacity water tanks at great risk, such that lives might be lost were the tanks to fail. More accurately, Judge Alvarez said, it was the town that had put its residents at risk.

"The town argues that the two Desert Knolls tanks overlook numerous homes and 'the results would be catastrophic' if the tanks were to rupture," Judge Alvarez wrote. "But the evidence showed that the tanks were there first: the Desert Knolls tanks were constructed in 1949 and 1988, and most of the homes below the tanks were built after 1994. The town was incorporated in

1988, meaning it was the town that approved the construction of most of the homes built below the tanks after 1994."

The town was angling to bite off way more than it could chew with the water company takeover, Judge Alvarez said.

"The Apple Valley water system has 470 miles of underground distribution and transmission mains, which are in constant need of maintenance and replacement" and the "majority of the capital assets in a water system consists of buried pipe, out of sight to customers but constantly degrading," Judge Alvarez stated,

"There is a substantial risk that the town would fail to commit the needed level of capital improvements and maintenance to the system. While the town does not plan to change the level of investment, there is a substantial risk that it will not be able to match the capital expenditure level made under private ownership. The evidence demonstrated that owners of nearby municipally-owned water systems have invested far less than Liberty in their systems. From 2012 to 2018, capital investment in the Apple Valley system was twice (202 percent) the system's depreciation. In contrast, the nearby municipally-owned systems (Victorville, Hesperia, Adelanto, and Helendale Community Service District) made capital investments of just 20 percent to 48 percent of the sys-

tems' depreciation. Again, the town itself has no track record of capital expenditure levels on a water system. But the town's record with its own sewer system shows the same pattern of investment below the rate at which the assets are depreciating, like the water systems in neighboring communities. From 2011 through 2018, the value of the town's sewer capital assets, net of depreciation, dropped from \$32.6 million to \$22.5 million."

Judge Alvarez said concern with regard to "insufficient investment under town ownership is well-founded. If the town were to acquire the water system, there is a risk that its capital investments will not keep up with the system's depreciation, similar to the performance of the other nearby municipally-owned systems and the town's own performance with its sewer system. Such underinvestment would cause the system to degrade, to the detriment of the system and, ultimately, the detriment of its customers."

In his conclusion, Judge Alvarez ruled "The court finds that Liberty, through evidence introduced during the court's bench trial, has rebutted the presumptions established by eminent domain law for the taking of its property for use as a municipal water utility. In particular, Liberty has disproved that 1) the public in-

vestment in the Apple Valley system was twice (202 percent) the system's depreciation. In contrast, the nearby municipally-owned systems (Victorville, Hesperia, Adelanto, and Helendale Community Service District) made capital investments of just 20 percent to 48 percent of the sys-

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## Fontana Shooting Video Released *from front page*

to gain entry to a neighbor's home.

Also released was footage from a video surveillance system showing a man subsequently determined to be Kinard on the porch of the home, removing a window screen, walking off with it and then returning.

Kinard, 29, had a history of burglary arrests. As of the February 13 incident, Kinard was on a probational release related to a previous burglary conviction, and was avoiding incarceration by having agreed to engage in no further violations of the law and submit to supervision. At the time of the shooting, the police department had not identified Kinard as the suspect its officers were dealing with.

Upon reaching the home on the north side of the street where the burglary was reported as taking place, a body video cam and accompanying audio shows officers locating the open window from which the screen had been removed and through which Kinard had apparently gained entry. The video shows officers peering inside with the assistance of a flashlight beam, and one calls out their presence. After a momentary delay, Kinard can be seen coming out of a room toward the middle of the house into a hallway. Ignoring the officers' shouts and demands that he not move, Kinard exited the rear of the house, at that point outside the body cam's field of view, and took flight. A choppy video of the pursuit from one of the body cams

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## Upland & State Wildlife Officials In 1999 Pledged To Keep A Portion Of Obsolete 1930s-Era Upland Water Basin Preserved As A Wetlands *from front page*

in terms of all conceivable issues, including land use, water use, air quality, potential contamination, noise, traffic, and biological and cultural resources. An environmental impact report specifies in detail what measures can, will and must be carried out to offset those impacts. A mitigated negative declaration falls near the other end of the scale, and exists as a far less exacting size-up of the impacts of a project, by which the panel entrusted with the city's ultimate land use authority, as in the case of Upland the city council, issues a declaration that all adverse environmental impacts from the project will be mitigated, or offset, by the conditions of approval of the project imposed upon the developer.

On April 13, 2020, during a teleconferenced meeting in which the public participated remotely and electronically rather than in a physical forum, the Upland City Council voted 4-to-1 to give Frontier Homes an entitlement to construct the 65 units of single-family detached residential homes to be known as the Villa Serena project. In granting the project approval, the council did so based on a mitigated negative declaration.

Judge Cohn has now tentatively determined, after a citizens group challenged the city's approval, that the mitigated negative declaration was insufficient.

In 1939, following the devastating flooding of 1938, the San Bernardino County Flood Control District converted four parcels between 15<sup>th</sup> Street and 16<sup>th</sup> Street a little more than a mile east of Euclid Avenue into a 32-acre percolation basin as an augmentation to a then-existing stormwater control system. In addition to allowing for the settling of water at that spot into the water table, the 15<sup>th</sup> Street basin was also intended to intercept stormwater runoff from 583 acres of surrounding land. That basin was capable of holding more than 50.4 million gallons of water.

In 1969, the dyke/embankment creating the basin, which had been compromised by the burrowing

of gophers and squirrels, nearly failed during an intensive set of deluges, and the Foothill Knolls neighborhood, which lies between 15<sup>th</sup> Street to the north, the the city limits to the east, and Foothill Boulevard to the south and Campus Avenue to the west, was evacuated.

In 1991, Upland obtained title to the basin.

In the 1950s, what had once been a gravel pit east of Campus Avenue and above 14<sup>th</sup> Street, west and south of the basin, was converted into a landfill. In the early 1980s, that landfill was shuttered. Contaminants at the site festered below the surface, including pockets of methane gas, which was burned off at various venting spots scattered about the site.

Because water seeping through the landfill below ground migrated into the water in the basin, and because the basin was a source of water into the aquifer below Upland, the Santa Ana Regional Water Quality Control Board ordered Upland to stop impounding and percolating water into the water table near the landfill to prevent the migration of contaminants into water wells drawing from the water table. This order required the City of Upland to reduce the size of the basin between 15<sup>th</sup> Street and 16<sup>th</sup> Street by filling in its westernmost 12 acres.

The California Department of Fish and Game, exercising its authority, called upon the city to protect the fish and wildlife that could be adversely impacted by the regrading of the earthen-bottomed basin. Ultimately, in 1999, the Department of Fish and Game entered into a streambed alteration agreement with the City of Upland in accordance with Fish and Game Code section 1600, et sequitur. Contained within that pact was language stating, "There shall be no loss of wetland habitat and function. Impacts to wetland habitat shall be mitigated at a 1.5 to 1 ratio by management of the basin to allow for retention of wetland habitat at the eastern sector, which grows as a result of flow and [percolation] in the basin."

The agreement mandated that Upland provide annual reports until 2006 on the maintenance of the replacement wetlands. Upland had reestablished the wetlands, with the goal of preserving wildlife habitat, in December 2000. The city commissioned LSA Associates to carry out the studies of the condition of the wetlands and provide those mandated annual reports.

Beginning in 1999, a consortium of investors and developers known as the Colonies Partners, led by managing principals Dan Richards and Jeff Burum, began in earnest an effort to develop the Colonies at San Antonio residential and the Colonies Crossroads commercial subdivisions on property in northeastern Upland previously owned by the San Antonio Water Company that had long been deemed undevelopable. Those projects were rendered achievable by the California Department of Transportation's extension of the 210 Freeway across the northern portion of the city, which further involved the San Bernardino County Flood Control District and the Army Corps of Engineers completing elements of regional flood control projects that were augmented with the Colonies Partners' construction of storm drain and sewer facilities. Some of the infrastructure the Colonies Partners was to complete for its residential and commercial subdivisions was ultimately dedicated to the city and those improvements increased the capacities of streets, storm water drainage facilities and sewers in some areas within the Upland City Limits outside the specific plan area for the Colonies Partners' undertaking. Accordingly, on September 24, 2002, the city council approved a development agreement with the Colonies Partners allowing the development of the Colonies at San Antonio Project to proceed. A section of that agreement entailed the city paying the Colonies Partners \$5 million as the city's fair share cost toward the infrastructure the Colonies Partners was undertaking to build in conjunction with its projects. Included in the agreement was that 20.3 acres of the original 32-acre percolation basin near 15<sup>th</sup> Street would be utilized as a flood water basin. The cash-

strapped city was not in a position to pay the Colonies Partners a full five million dollars at that time. On December 22, 2003, the city council voted to modify the city's agreement with the Colonies Partners by paying Richards' and Burum's company \$1.5 million, and granting Burum and Richards a ten-year first right of refusal to explore possible uses for a portion of the reduced basin footprint, and agreeing that upon such a mutually satisfactory project being identified, the city would transfer title to that portion to the Colonies Partners for one dollar, the Colonies Partners would forgive the city's remaining \$3.5 million debt, the processing of the Colonies Partners' project proposal would be expedited, and the remainder of the basin property/wetlands preserve would be dedicated to public use.

In 2013, the Colonies Partners had not yet exercised its right toward developing the basin property, which in any event was complicated by the requirement that a good part of it be maintained as wetlands wildlife habitat. The city council detailed then-Assistant City Attorney Kimberly Hall-Barlow to write a letter to the Colonies Partners to note the lack of progress with regard to the development of the property and gently prod it toward action by the January 21, 2014 expiration date of decade-long term in which the Colonies Partners had to make use of the property. Hall-Barlow, however, defied the city council's instructions on the letter's tenor, instead penning a much more aggressive missive to the Colonies Partners that might serve as the groundwork for triggering the reversionary clause in the December 2003 re-vamping of the September 2003 agreement, such that the city would retain the 9.2 acres in question. The council, however, unwilling to confront the Colonies Partners, conveyed to then-City Attorney Richard Adams its displeasure with Hall-Barlow's effort. Adams conferred with other members of his firm, Jones & Mayer. Hall-Barlow was thereafter eased out of her position as assistant city attorney by Jones & Mayer and moved into the position of city attorney with the City of West Covina, where Jones & Mayer also

had a contract to provide legal services.

Though the 10-year term in which the Colonies Partners was to develop the property expired on January 21, 2014, more than a year later, on February 9, 2015, the Upland City Council voted to approve a second amendment to the agreement allowing an additional three years for the Colonies Partners to identify and initiate a project on a portion of the basin.

In June 2017, Rosemary Hoerning, then Upland's city engineer, accepted a drainage study relating to the basin that the Colonies Partners had the engineering firm Madole & Associates prepare. Madole & Associates concluded that only 11.1 acres of the basin's 20.3 acres were needed for future flood control purposes, based on the assumption that previous construction of an additional stormwater retention basin upstream and the Army Corps of Engineers' construction of a concrete drainage channel along the eastern edge of the Colonies at San Antonio project would adequately handle stormwater flows. That document, however, did not deal with the issue of having to maintain a significant portion of the basin footprint as wetlands. Based on the Madole & Associates study, the City of Upland, by a quitclaim deed, transferred 9.2 acres of the western portion of the basin to the Colonies Partners.

Subsequently, the Colonies Partners made an arrangement with Frontier Homes, headed by a personal friend of Jeff Burum, James Previti, to undertake the development of the 9.2 acres. It is not clear whether the Colonies Partners understood the limitations imposed on the development of the property as a consequence of the City of Upland's pact with the Department of Fish and Wildlife with regard to maintaining the property as wetlands. Nor is it known whether Burum and the Colonies Partners informed Previti and Frontier Homes about the limitations on development at the site.

In 2018 Frontier Homes learned through its consultant, Q3, that reconfiguring the remaining eastern portion of the basin would alter the facility in such way that unless the capacity of the basin was reduced from its

current 50.428 million gallons of water to below 16.29 million gallons, it would be subject to the jurisdiction of California's State Division of Safety of Dams. Without that reduction in holding capacity, that state agency would not sign off on the project without significant upgrades to the remaining basin, including doing excavation so the foundation of the basin embankment could be established on bedrock and its spillway enlarged, a technically challenging and prohibitively costly undertaking. There ensued a manipulation of paperwork to indicate the holding capacity of the basin had dropped to below 16.29 million gallons, which Hoerning, as city engineer, knew to be untrue as to physical fact.

In 2019, Hoerning was installed as Upland's acting/interim city manager when then-City Manager Jeannette Vagnozzi was sacked. In March 2020, the council dropped the acting/interim prefix from Hoerning's title, making her the city's full-fledged city manager. Hoerning, convinced that the city council was in favor of the Villa Serena project, had facilitated at the staff level the processing of Frontier Home's project application. By chance, the city had contracted with LSA Associates, the same firm that had carried out the annual reports prepared for the California Division of Fish and Wildlife relating to the 15<sup>th</sup> Street Basin wetlands, to prepare the mitigated negative declaration for the Villa Serena project. In April 2020, on the eve of and the very day of the city council's hearing on the project, Hoerning learned from LSA Associates personnel, based on a review of the reports that company had done for the California Division of Fish and Wildlife more than a decade-and-a-half previously, of the manner in which the agreement with the California Department of Fish and Wildlife encumbered the property upon which the Villa Serena project was to be built. As the matter was a rather arcane one, and the record with regard to both the streambed alteration agreement and its accompanying limitations were buried in reams of documentation, Hoerning allowed the council to consider the project without being fully apprised of the

*Continued on Page 6*

## To Explain To An Irate Public The Reason For A \$1 Million Settlement Provided To Slain Burglar's Parents, Fontana This Week Released Officer's Video Cam Footage Of The Shooting *from front page*

shows the officers giving pursuit, with the video liberating between total black and slightly better visibility as the lighting conditions change with the officer's rapid movement.

According to the police department, Kinard scaled three walls and ran through backyards in his escape attempt. Kinard headed into a tract of homes under construction south of Casa Grande Avenue at the southwest corner of Justin Street and Heinz Way, where he took refuge inside a portable enclosed toilet stall, which the police department said was roughly 1,000 feet away from the home Kinard had been burglarizing.

Footage from Tuitavake's body cam shows him approaching the portajohn located within a remote corner of the residential construction site hemmed in by block walls. Tuitavake is seen opening the door to the portable toilet with his left hand, and visible in the bright glow of the flashlight held in his right hand is Kinard, who

is seated, relatively immobile, within the portacabin. Kinard gestures with his left hand, holding it palm up. Tuitavake lets go of the door, which begins to close, but just before it reaches the jamb, he reaches out with his right hand in which he is still holding the flashlight, the beam of which has at that point turned momentarily downward, and slaps the door open once more while simultaneously drawing his gun with his left hand. He fires it at once, a single shot. Immediately upon the sound of gunfire, Kinard can be heard making a load and short-lived plaintive moan, "Ohh," after which he seems to have blacked out.

According to Fontana Police Chief Billy Green, Tuitavake opened fire roughly two-and-a-half seconds after he initially opened the toilet stall door.

Green in a video statement accompanying the release of the footage emphasized that when Tuitavake opened the door the first time, Kinard was seated with his arms folded

and neither hand visible. Green displayed a still isolated from the video showing Kinard's right hand still obscured when he lifted his left hand.

Green said Kinard "began to roll his right hand forward toward the officer, revealing a metallic object." A grainy closeup of a still from the video showed what appeared to be a compact and indistinct light-colored object in his right hand that appeared too small to be a gun. Green said the object was later determined to be a lighter. An unverified report to the *Sentinel* was that it was a plastic lighter.

Other footage released by the department shows Tuitavake in the immediate aftermath of the shooting seeking to render assistance to Kinard. Tuitavake is heard saying, "Hey bro, breathe for me" and "I gotcha."

Further footage shows other officers with Tuitavake tending to Kinard in the relatively tight confines around the entrance into the portable toilet. Those efforts were in vain, as Kinard's aorta had been ruptured by the gunshot. He died at the scene.

Tuitavake, as is standard procedure, was placed on paid administrative leave

in the near aftermath of the shooting. The department's internal affairs division, however, made a determination that he had not acted improperly, and he was reinstated.

Simultaneously, the department moved to stem any controversy pertaining to the shooting.

At that point, Tuitavake had not been identified as the officer involved in the shooting. Nevertheless, there was an immediate clamoring for the release of the video footage from the responsible officer's body cam. The city and the police department refused, even in the face of California law which requires that footage of police shootings must be made public within 45 days of such an occurrence. The department denied the requests, citing the need to protect the integrity of its investigation of the shooting and the safety of witnesses.

After Tuitavake was reinstated to duty, the department yet defied calls for the release of the relevant video material. Pushed as to why, a department spokesman said there were concerns that the video in the hands of the public would lead to civil unrest and rioting.

The department put out some factually inaccurate

information meant to reduce public anxiety over what had occurred, including statements that Kinard was rushing the officer when he was shot.

Kinard's bereaved parents, Amond Hawkins and Kenisha Kinard, represented by the Law Firm of Douglas Hicks Simplis & Perez, in March lodged a claim against the city based on the death of their son.

A claim against a municipal entity is a precursor to a lawsuit. Under California law, those intent on suing a city must first lodge a claim, which the city can acknowledge and settle upon terms deemed suitable by both parties. A city has six months to reject or accept a claim. If a claim is rejected or if six months elapses, the aggrieved party can then proceed with a lawsuit.

In relatively short order, the City of Fontana came to terms with Douglas Hicks Simplis & Perez over the Hawkins/Kinard claim, agreeing to provide Daverion Kinard's parents with \$1 million to settle the claim in its entirety. Under the terms they reached with the city, the \$1 million they are receiving is considered a full and final settlement of their claim, they agreed to make no public comment

with regard to the shooting nor any comments about the city or the department that might be interpreted as "disparaging" and they dropped their demand that the video be publicly released. Indeed, according to Police Chief Green, both Amond Hawkins and Kenisha Kinard wanted Tuitavake's bodycam video footage kept out of the public domain to preserve, Green said, Daverion Kinard's dignity.

The announcement last week of the \$1 million settlement, however, provoked considerable concern and skepticism. A \$1 million payout to the parents of a burglar who was shot and killed by police after he was caught in the act during a break-in and then attempted to flee, in particular given that the police department had made a finding that the officer who had fired the fatal shot had done nothing illegal, wrong or out of department policy was difficult for a large number of people to swallow. Under California law and court precedent, a law enforcement officer is at liberty to use deadly force against a fleeing felon if in the officer's judgment the individual represents a threat to the officer or oth-

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## Terral Leaves Needsles City Council *from front page*

regulations vis-à-vis those in other states resulted in travelers or tourists from Utah, Colorado, Texas, New Mexico, Arizona, Nevada and elsewhere, while traveling to California via Route 40, being obliged to unload their firearms upon crossing the Colorado River into the Golden State, and to keep their ammunition in a separate locked compartment, or risk arrest on a felony firearms charge.

Terral and Williams garnered statewide and national attention, as they sponsored, in the summer of 2019, a resolution to declare Needles a Second Amendment sanctuary city, which was intended to suspend certain state laws pertaining to the carrying of loaded firearms.

The Second Amendment sanctuary resolution, which was passed by the city council, called upon local law enforcement, meaning the San Bernardino County Sheriff's Department and the California Highway Pa-

trol, standing down with regard to enforcing firearms regulations under California law in Needles. That extended to allowing Needles residents to travel outside of the state to purchase ammunition, which runs counter to California law, intended to ensure that citizens buy bullets in California, where vendors are required to comprehensively log ammunition sales, capturing the identity of the buyer and the precise type and batch of bullets sold.

Using the term sanctuary in the resolution Terral proposed was deliberate, as he recognized that the proposal was calling for the suspension of state law. To neutralize charges or accusations that he was advocating lawlessness, the name for the resolution Terral used harkened to the ongoing movement by the State of California's so-called progressive element, embodied by the Democrats who controlled then and still control both houses of the legislature as well as the offices of governor, lieutenant governor, attorney general, secretary of state, superintendent of

schools, comptroller and auditor, all of whom were and are calling for California to serve as a sanctuary state, that is, one in which federal immigration laws were not enforced.

Terral was a fierce supporter of then-President Donald Trump as well as Republican and Right Wing causes. This put him within the mainstream among a sizable contingent of Needles residents. Nevertheless, the political initiatives he championed often fell outside the purview of local officials and the city council of which he was a member.

Terral's so-called conservative philosophy was out of step with what has proven out as the major social, political and legal trend in Needles in the last decade, that being the city's marijuanification.

After 89 years of marijuana being strictly illegal in California, in 1996 the state's voters passed Proposition 215, the Compassionate Use of Marijuana Act, which made marijuana legal for medical purposes, pursuant to a user of the substance obtaining a pre-

scription for it from a licensed medical doctor. San Bernardino County and all of its political subdivisions, however, were unaccepting of that shift altogether for most of the next 16 years, such that neither the county nor its 22 incorporated cities and its two incorporated towns allowed marijuana dispensaries to set up operations within their confines.

Needles in 2012 became the first municipality in San Bernardino County to permit and license dispensaries. This occurred some four years before California voters passed the Adult Use of Marijuana Act, Proposition 64, in 2016, making the use of marijuana for its intoxicative effect legal for those 21 years of age or older. Progressives hailed Needles' 2012 action while traditionalists were opposed to it.

Terral came into office in 2018, as Needles was involved in a competition with another cash-strapped San Bernardino County city, Adelanto, in an effort to exploit the liberalization of California's marijuana laws to get in on the ground

floor of the commercialization of marijuana, by permitting widespread operation of marijuana cultivation facilities and marijuana boutiques and retail stores and layering a sales/operation tax on those entities to generate revenue.

As a conservative Republican who was potentially looking toward higher office, Terral was torn between the ethos of the city and the city council he was a part of and the Republican Party, which hewed more toward the historical attitude that marijuana and its use is adverse to an orderly and civilized society.

Abiding by the strictures of Terral's party-affiliation and socially conservative roots was put to the test when in 2019 his wife was offered a lucrative job at a marijuana-related commercial operation in Needles. In the end, she elected not to go to work there because of the suggestion this would entail a conflict on her husband's part whenever issues relating to cannabis commercial activity came before the city council. Not having his wife entangled with the cannabis indus-

try preserved for Terral his reputation as a true red rock-ribbed Republican.

At this point, however, Terral's political ambition appears to have abandoned him, and he on Tuesday announced he was giving up the elective office he held. Incumbency is, electoral statistics show, an advantage in being reelected to the office one holds as well as a relative advantage when seeking another elective office. It would thus appear that holding onto the office of city councilman or vying for another elective post such as state assemblyman or state senator is no longer a priority for Terral.

The 52-year-old cited personal and business reasons for tendering his resignation. He is employed as a cable company technician and his parents operate a local bed and breakfast inn.

Terral's resignation from the Needles City Council is the second one from that august panel in two years. Former Councilman Clayton Hazlewood resigned his office on December 10, 2019.

*-Mark Gutglueck*

## Upland Officials Traded Preserved Wetlands Property To The Colonies Partners W/O Spelling Out A Portion Of It Was Off-Limits To Development *from page 4*

commitment to maintain a portion of the site as open space.

Accordingly, on April 13, 2020, the Upland City Council voted 4-to-1 with Councilwoman Janice Elliott dissenting, to give Frontier Homes an entitlement to construct 65 single family detached residential units on 9.2-acres owned by the Colonies Partners within the footprint of the defunct flood control detention basin north of 15<sup>th</sup> Street.

Thereafter, a group of Upland residents living both within and outside the Foothill Knolls District led by Lois Sicking Dieter, formed Friends of Upland Wetlands, which retained attorney Cory Briggs, who filed a petition for a writ of mandate on the newly-formed association's behalf in San Bernardino County Superior Court, naming the City of Upland as the respondent and Frontier Homes as the real party in interest. The writ sought the rescission of the approval of the Villa Serena project until a full-blown environmental impact report was undertaken and completed.

Judge Cohn in his tentative decision rendered on July 14 wrote, "Frontier Homes prepared an 'initial study-mitigated negative declaration.' Upland approved the initial study-mitigated negative declaration and the project overall. Petitioner Friends of Upland Wetlands challenges the approvals, contending that California Environmental Quality Act requires a full environmental impact report for the project, rather than a mitigated negative declaration. Friends of Upland Wetlands is correct. The project site may be a 'wetlands' area, requiring consultation with the responsible agencies. Additionally, there is substantial evidence in the administrative record supporting a 'fair argument' that the project may result in significant biologi-

cal, noise, aesthetic, and groundwater recharge impacts. Accordingly, the petition is granted. A full environmental impact report is required."

The Friends of Upland Wetlands did fail in effectively assailing the project approval on the grounds that the Upland City Council ignored the Upland Planning commission's recommendation against the approval of the project, Judge Cohn ruled. The planning commission objected to what its members collectively found would be significant environmental impacts. In his decision, Judge Cohn dismissed the Friends of Upland Wetland's contention that the planning commission's determination constituted a binding finding that the project was unacceptable. He pointed out that "Although the planning commission recommended denial, it did so without considering certain modifications to the project—modifications that were later considered by Upland's staff and incorporated into the staff report. Therefore, the planning commission's recommendation was based on incomplete information. As a result, the planning commission's recommendation of denial does not constitute substantial evidence of an environmental impact as contended by Friends of Upland Wetlands."

Still the same, Cohn said, "The initial study-mitigated negative declaration failed to recognize that the project may impact wetlands, requiring consultation with the responsible agencies."

Cohn's decision did not directly state but implied that the project site for the Villa Serena project includes property that cannot be built upon.

"Friends of Upland Wetlands contends the initial study-mitigated negative declaration failed to recognize that several acres of the property are 'wetlands' and are therefore under the jurisdiction of the California Department of Fish and Wildlife," Cohn stated. "Upland and Frontier Homes, however, write: 'This case . . . is premised on the misconception that a decades-old operating flood control channel . . . is a wetland. It is not, and California and Federal law make clear that operating and licensed stormwater

facilities are 'artificial' or 'nonwetland.'"

The city and developer are incorrect on that point, Judge Cohn held.

"It is not so simple," Cohn wrote. "First, Upland and Frontier Homes rely on documents such as State Water Resources Control Board Resolution No. 2019-0015 and the Corps of Engineers Wetlands Delineation Manual (1987), which are not part of the administrative record. The court cannot consider them. Second, and more importantly, the issue is not whether the property is or is not ultimately determined to be wetlands—the issue is whether Friends of Upland Wetlands has submitted 'substantial evidence' supporting a 'fair argument' that it is, such that a full environmental impact report is required."

Judge Cohn continued, "Upland and Frontier Homes have ignored substantial evidence cited by Friends of Upland Wetlands supporting a fair argument that the project site is a wetlands area. The 15<sup>th</sup> Street Basin was originally thirty-two acres, and in 1999-2000, Upland filled in the westerly 11.2 acres with the oversight of the Santa Ana Regional Water Quality Control Board and the California Department of Fish and Wildlife. In the annual report prepared for the California Department of Fish and Wildlife under the 1999 streambed alteration agreement, LSA Associates, Inc., the same consulting firm that prepared the initial study-mitigated negative declaration in this case, states that the 1998 biological assessment of the basin found the habitat quality of the area was of low value due to the limited diversity of vegetation, but that '[t]he single habitat component of any notable value on the site is the presence of water, albeit seasonally.' At that time, the LSA biological assessment characterized the vegetation of the basin as either 'upland' or 'wetland,' with 6.5 acres of the thirty-two-acre basin delineated as wetlands. Of that amount, 5.3 wetland acres were located in the remaining unfilled portions of the basin. The 1999 agreement also called for 1.8 acres of 'new' wetlands area to be created in the basin to replace the 'lost' 1.2 acres of wetland area from the fill project. Therefore, additional wet-

land areas were apparently added to the remaining unfilled portions of the basin, where this project is to be located."

Cohn wrote, "Upland and Frontier Homes contend that Friends of Upland Wetlands mischaracterizes the 1999 streambed alteration agreement, noting that it expired in 2001 and was issued under a Fish and Game Code section that has since been repealed. That does not mean, however, that the law underlying the agreement no longer exists elsewhere in the code."

"Cohn continued, "The 1999 streambed alteration agreement was issued pursuant to Fish and Game Code section 1601, which at the time contained provisions regarding notice of construction projects and proposals for modifications, and stated in relevant part: 'Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local governmental agency . . . shall be submitted to the California Department of Fish and Wildlife if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the California Department of Fish and Wildlife in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the California Department of Fish and Wildlife, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the California Department of Fish and Wildlife. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the California Department of Fish and Wildlife shall notify the governmental agency . . . of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modification in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource . . .'"

Judge Cohn noted that California law "require[s] a governmental agency

proposing a project that would divert, obstruct, or change the natural flow, or result in the disposal of debris, in a river, stream, or lake designated by the California Department of Fish and Wildlife, to submit prescribed plans and other information to the California Department of Fish and Wildlife and to follow prescribed procedures" and state law further requires "a holder of an agreement to alter a streambed to remain responsible for implementing any mitigation or other measures necessary to protect fish and wildlife resources after the agreement had expired," such that the California Department of Fish and Wildlife is authorized "to suspend or revoke an agreement if the holder is not in compliance with its terms."

In his ruling, Judge Cohn held that "The 1999 streambed alteration agreement is important, notwithstanding expiration, because it provides substantial evidence that both Upland and the California Department of Fish and Wildlife previously considered the 15<sup>th</sup> Street Basin to be a 'bed, channel, or bank of' a streambed that was under the jurisdiction of the California Department of Fish and Wildlife. At that time, the California Department of Fish and Wildlife had determined that Upland's intent to fill in the westerly 11.2 acres of the original basin could 'substantially adversely affect existing fish and wildlife resources, including: red-tailed hawk, red-winged blackbird . . . other birds, mammals, reptiles, amphibians, plants, and other aquatic-related resources and wildlife' in the basin. Among other conditions, the agreement stated, 'There shall be no loss of wetland habitat and function. Impacts to wetland habitat shall be mitigated at a 1.5 to 1 ratio by management of the basin to allow for retention of wetland habitat at the eastern sector, which grows as a result of flow and [percolation] in the basin.' In accordance with the permit issued under the agreement, the 'lost' 1.2 acres of wetland area required a 1.8-acre replacement to be established in the remaining unfilled area of the basin, and Upland was required to submit an annual report to the California Department of Fish and Wildlife for five years."

That constituted a substantial flaw in the mitigated negative declaration, Judge Cohn opined. "Therefore, there is substantial evidence supporting a fair argument that the site is a designated wetlands area, such that a significant environmental impact may occur as a result of the project," Cohn wrote.

Judge Cohn stated, "Upland and Frontier Homes have not pointed to any evidence in the record indicating that the 'wetlands' designation underlying the 1999 streambed alteration agreement was later rescinded or otherwise modified. The initial study-mitigated negative declaration relies on the 'Phase I Environmental Site Assessment' of the project site. The environmental site assessment was conducted concurrently with the biological assessment in June 2018. The environmental site assessment contains maps that identify the site as 'National Wetland Inventory'—part of a national wetlands database purportedly maintained by the U.S. Fish & Wildlife Service. The environmental site assessment also advises that 'the existence of wetlands information data in a specific report does not mean that all wetlands in the area covered by the report are included . . . [and] the absence of any reported wetlands information does not necessarily mean that wetlands do not exist in the area covered by the report.' Yet the executive summary of the environmental site assessment, after stating that the 'Site is listed with State Water Resources Control Board California Integrated Water Quality System . . . database as Inland Empire Utilities Authority groundwater recharge basin operations and maintenance,' inexplicably states that the 'listing does not represent a recognized environmental condition.' No explanation is given in the initial study-mitigated negative declaration or by Upland and Frontier Homes for the discrepancy between this conclusion in the executive summary portion of the environmental site assessment and the data displayed on the maps that show the site listed in the National Wetland Inventory—a listing which presumes the recognized environmental condition of a 'wetlands' area."

That constituted a substantial flaw in the mitigated negative declaration, Judge Cohn opined.

"Therefore, there is substantial evidence supporting a fair argument that the site is a designated wetlands area, such that a significant environmental impact may occur as a result of the project," Cohn wrote.

*Continued on Page 11*







Public Notices

information on this statement becomes Public Record upon filing. s/ Yulissa Y Lopez Nunez

This statement was filed with the County Clerk of San Bernardino on: 07/19/21

I hereby certify that this is a correct copy of the original statement on file in my office.

Began Transacting Business: 06/30/21 County Clerk, s/ 15199

NOTICE- This fictitious business name statement expires five years from the date it was filed in the office of the county clerk.

08/13/21, 08/20/21, 08/27/21, 09/03/21

ORDER TO SHOW CAUSE FOR CHANGE OF NAME CASE NUMBER CIVSB2120235

TO ALL INTERESTED PERSONS: Petitioner: Jia-Yue Chiao filed with this court for a decree changing names as follows: Jia-Yue Chiao to Elaine Jiayue Chiao

THE COURT ORDERS that all persons interested in this matter appear before this court at the hearing indicated below to show cause, if any, why the petition for change of name should not be granted.

Notice of Hearing: Date: 09/29/21 Time: 9:00 a.m. Department: S17

The address of the court is Superior Court of California, County of San Bernardino, 247 West Third Street, San Bernardino, CA 92415

IT IS FURTHER ORDERED that a copy of this order be published in the San Bernardino County Sentinel in San Bernardino County California, once a week for four successive weeks prior to the date set for hearing of the petition.

Dated: July 14, 2021 Lynn M. Poncin Judge of the Superior Court. Published in the San Bernardino County Sentinel 08/13/21, 08/20/21, 08/27/21, 09/03/21

FBN 20210007683 The following person is doing business as: CLUB SPIN 31514 YUCAIPA BLVD #D YUCAIPA, CA 92399

Public Notices

in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ KARLA ALANIS, MANAGING MEMBER

Statement filed with the County Clerk of San Bernardino on: 07/28/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202101MT

FBN 2021007549 The following person is doing business as: CALIFORNIA LANDSCAPE DESIGNS 18349 EUCLYPTUS ST HESPERIA, CA 92345

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: JAN 04, 2015

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ SAUL TREJO, OWNER Statement filed with the County Clerk of San Bernardino on: 07/22/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202102IR

FBN 20210007633 The following person is doing business as: RED'S HOLY SMOKES 2751 RECHE CANYON RD. SP 102 COLTON, CA 92324

Public Notices

name or names listed above on: N/A By signing, I declare that all information in this statement is true and correct.

s/ CHRISTOPHER L. HINE, OWNER Statement filed with the County Clerk of San Bernardino on: 07/26/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202103IR

FBN 20210007630 The following person is doing business as: PATRIOT PAINTING 1595 W HOLY ST RIALTO, CA 92376

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ JAMES L. KEMPLE, OWNER Statement filed with the County Clerk of San Bernardino on: 07/26/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202104IR

FBN 20210007545 STATEMENT OF ABANDONMENT OF USE OF FICTITIOUS BUSINESS NAME STATEMENT The following person is doing business as: THE ZUMBA ROOM 638 W. BASELINE RD RIALTO, CA 92376

Public Notices

filed with the County Clerk of San Bernardino on 06/12/2017. Original File# 20170006873

The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ BELEN DIAZ, OWNER Statement filed with the County Clerk of San Bernardino on: 07/22/2021

FBN 20210007602 The following person is doing business as: EST AUTO REGISTRATION 582 W FOOTHILL BLVD RIALTO, CA 92376

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ MICHAEL A. DELA ROSA, OWNER Statement filed with the County Clerk of San Bernardino on: 07/26/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202106MT

FBN 20210007687 The following person is doing business as: THE MOBILE HOT HOSE 1666 W 11TH ST SAN BERNARDINO, CA 92411

Public Notices

ST SAN BERNARDINO, CA 92411 The business is conducted by: AN INDIVIDUAL

The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ DEVIN L. HUMPHREYS, OWNER Statement filed with the County Clerk of San Bernardino on: 07/28/2021

FBN 20210007656 The following person is doing business as: THE REAL ESTATE GUYS 3350 SHELBY ST SUITE #100 ONTARIO, CA 91764

The business is conducted by: AN INDIVIDUAL The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ LEONARD CALDERA, OWNER Statement filed with the County Clerk of San Bernardino on: 07/27/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202108MT

FBN 20210007681 The following person is doing business as: ALIGN HOMES 10535 FOOTHILL BLVD. SUITE #460 RANCHO CUCAMONGA, CA 91730

Public Notices

NARDINO); ALIGN HOMES, INC. 10535 FOOTHILL BLVD. SUITE # 460 RANCHO CUCAMONGA, CA 91730

The business is conducted by: A CORPORATION The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ JOEL R. VALMONTE, C.F.O Statement filed with the County Clerk of San Bernardino on: 07/28/2021

FBN 20210007669 The following person is doing business as: OPTIMUM REALTY GROUP 10535 FOOTHILL BLVD. SUITE #460 RANCHO CUCAMONGA, CA 91730

The business is conducted by: A CORPORATION The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ JOHN DOUGLAS GOTOCOY FONTAMILLAS, SECRETARY Statement filed with the County Clerk of San Bernardino on: 07/27/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202110MT

FBN 20210007679 The following person is doing business as: CSG LIVING GROUP 10535 FOOT-

Public Notices

HILL BLVD. SUITE # 460 RANCHO CUCAMONGA, CA 91730 ( PRINCIPAL PLACE OF BUSINESS SAN BERNARDINO); ALIGN HOMES, INC. 10535 FOOTHILL BLVD. SUITE #460 RANCHO CUCAMONGA, CA 91730

The business is conducted by: A CORPORATION The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ JOEL R. VALMONTE, C.F.O Statement filed with the County Clerk of San Bernardino on: 07/28/2021

FBN 20210007607 The following person is doing business as: OPTIMUM REALTY GROUP 10535 FOOTHILL BLVD. SUITE #460 RANCHO CUCAMONGA, CA 91730

The business is conducted by: A CORPORATION The registrant commenced to transact business under the fictitious business name or names listed above on: N/A

By signing, I declare that all information in this statement is true and correct. A registrant who declares as true information which he or she knows to be false is guilty of a crime (B&P Code 179130. I am also aware that all information on this statement becomes Public Record upon filing.

s/ JOEL R. VALMONTE, C.F.O Statement filed with the County Clerk of San Bernardino on: 07/20/2021

I hereby certify that this copy is a correct copy of the original statement on file in my office San Bernardino County Clerk By: Deputy Notice-This fictitious name statement expires five years from the date it was filed in the office of the county clerk.

Published in the San Bernardino County Sentinel 08/06/2021, 08/13/2021, 08/20/2021, 08/27/2021 CN- BB31202112MT

Puckett Drastically Overestimated Town's Financial Ability To Maintain The Water System It Was Seeking To Take, Judge Ruled from page 9

terest and necessity require the town's project; 2) the town's project is planned in the manner that will be most compatible with the greatest public good and the least private injury; and 3) the use for which the town seeks to take Liberty's property is a more necessary public use than the use to which Liberty's property is presently devoted.

Puckett quarterbacked the town's move to place

Measure F before Apple Valley's voters in a specially-called election held on June 8, 2017. Measure F asked for authorization to issue \$150 million in bonds to finance the purchase of the water system in conjunction with the eminent domain complaint against Liberty Utilities. Over the life of the bonds, to retire the indebtedness in full was to run to \$558 million. Apple Valley officials, with Puckett in the lead, carried out an intensive sales job on Apple Valley residents, convincing them that issuing the bonds was their wisest course of action to secure the town's water future. Measure F passed with 7,200 votes or 57.89 percent to 5,238 votes or 42.11 percent.

ceeding a million dollars with regard to their issuance and pre-sale. By the time the eminent domain case concluded, Puckett was long gone from Apple Valley. But it had been his leadership when he was in place that led Apple Valley down the primrose path. Based in no small part on his number crunching and financial pronouncements, town officials generated among themselves the delusional confidence that a case for the takeover of the Apple Valley Ranchos Water Company could not only be accomplished but effectuated at a financial cost the town could bear. As it turned out, Apple Valley did not obtain the water system, and it expended \$8,355,556.45 in legal fees and costs since the commencement of the eminent domain action in 2015, consisting of \$5,677,843.90 in attorney's fees and

\$2,677,712.55 in legal costs other than payments to attorneys. Before his arrival in Apple Valley, there were multiple indications of Puckett's volatility, lack of reliability and potential for generating liability. With a bachelor of science degree in accountancy from Ferris State University, Puckett gravitated to work as a financial officer in government. Once in government, he obtained a master of business administration in public finance from the University of Michigan-Flint. By his late twenties, he was the director of finance with Eastpointe, Michigan, which was previously known as East Detroit. He was fired from that post for a reason never made publicly clear. He landed on his feet by obtaining a similar position with Flint, Michigan. In Flint, he was rela-

tively well thought of and recognized outside of the city by the Government Finance Officers Association of the United States and Canada with a certificate of achievement for excellence in financial reporting. He was appointed to the Michigan Municipal Finance Officers Association Board of Directors. Having gained the trust of then-Flint Mayor Woodrow Stanley, Puckett was given significant latitude in his oversight of Flint's financial affairs. In late 1998, things began to misfire for Puckett. The Flint Retirement Board learned that Puckett had neglected to transfer pension funds into a money market retirement system account for what was originally thought to be roughly six months. Initially the amount of dormant money that was inactive and not accruing interest was pegged at \$8 million. A little later it was disclosed

the nonproductive money under Puckett's watch was closer to \$17 million. Puckett downplayed the seriousness of what had occurred, pointing out that the retirement system had overall assets totaling roughly \$800 million. It was subsequently disclosed that the money not properly deposited or invested totaled more than \$20 million, and had remained inactive for more than a year, meaning the retirement system had failed to gain approaching \$1 million in interest over that period. In January 1999, Puckett acknowledged that his department had not had an independent audit of the retirement funds carried out over a more than a three-year period. With tension and negative publicity hanging over the city because of the mis-handling of the city's pension fund, Mayor Stanley lost faith in Puckett, who

Continued on Page 12

## Willingness To Release Video Marks Major Watershed At Fontana PD *from page 10*

At that point, pressure was brought to bear not only on the police department, but City Hall, including Mayor Acquanetta Warren and Councilmen Pete Garcia, John Roberts, Phil Cotharan, Jr. and Jesse Sandoval, as well as City Manager Mark Denny and Assistant City Manager Phil Burum. Citizens were demanding to know why taxpayer money, and a lot of it, was being handed out to the family of a man whose death was the end result of a felony he had perpetrated.

In this way, a decision to release the video was made, with the calculation being that it would demonstrate Kinard was killed when a young police officer panicked and used deadly force against someone who, albeit involved in criminal activity, represented no mortal threat to the officer, making what had befallen Kinard, an unjustifiable use of deadly force.

Indeed, the video has silenced those who had decried the settlement. At the same time, it has now raised questions about Tuitavake's suitability and continued status as a police officer, and the decision-making process within the



**Daverion Kinard**

police department in which the department's leadership sought to gloss over the shooting previously and allow Tuitavake to return to duty.

With circumstances now wildly altered, Police Chief Green this week said that Tuitavake is not out of the woods yet. He said the officer, who was welcomed onto the force in February 2019 after graduating from the sheriff's academy, almost two years to the day before the Kinard shooting, is yet the subject of an

investigation by both the Fontana Police Department and the San Bernardino District Attorney's Office as pertains to his action last February 13.

There is virtually no prospect that the Fontana Police Department will provide findings to the district attorney's office that would in any way lead to the filing of criminal charges against Tuitavake by the San Bernardino County District Attorney's Office. Nor would San Bernardino County District Attorney Jason Anderson entertain a criminal filing against Tuitavake or any police officer relating to the fulfilling of his or her duty as a peace officer.

Nevertheless, what was depicted on Tuitavake's body camera, Kinard's death and the aftermath of the entire episode, including first the refusal to release the video and now the worldwide scrutiny of the video, could well make Tuitavake's continuation as a Fontana police officer untenable.

Homegrown in Fontana, Tuitavake yet has family in the city. And while the

settlement with Amond Hawkins and Kenisha Kinard renders highly unlikely that they or perhaps family members or those close to them will seek to exact revenge for the shooting of Daverion Kinard, there is no guarantee that others will not. This puts not only Tuitavake at risk but other officers and members of his family as well. The prospect that Tuitavake and his colleagues on the force might find themselves obliged to adopt a hair-trigger on their firearms while at work in the community is not one that augers well for them, the department, the city or its citizens. For that reason, if Tuitavake can find work with another department, it may be better for all involved.

The outside scrutiny and the forced self-examination the department is engaging in in the aftermath of the Kinard shooting is remarkable. There has long been criticism of the insensitivity of, the tactics used and brutality evidenced by the Fontana Police Department. Whereas the vast majority of the community's members are non-white minori-

ties or Hispanics, historically upwards of 80 percent of the department's officers are white. The department has made inroads on that by a concerted effort to hire minorities, in particular Latino officers, in recent years, but the department



**Johnny Tuitavake**

remains vulnerable to suggestions that it has long been and remains a tool of a repressive elite. The department resisted, and resisted mightily, allowing anyone outside of the department to second-guess what the department's policies and standards were or how it was managed. There has been no shortage of suspects, witnesses, residents, bystanders – both guilty and innocent – who have been roughed up, beaten or killed by Fontana police officers over the years.

As recently as a year ago it would have been unthinkable that the police department would be induced, cajoled, persuaded, required or mandated to turn over to anyone evidence pertaining to an officer-involved shooting the department did not want to provide. In the United States following the George Floyd killing in Minneapolis in May 2020, police have now lost their presumed edge of automatic legal advantage/invulnerability. Fontana is apparently not immune from societal trends.

At the same time, it has not been lost upon those who have long decried the Fontana Police Department as a bastion of racism and presumed white privilege, that when it at last threw a police officer under the bus and compromised his vaunted status as a representative of law and authority who need not justify his actions, that officer was not white but rather of Tongan extraction, a so-called member of the protected minority class of Pacific Islanders.

*-Mark Gutglueck*

## Checks And Bank Account Records, Along With Cell Phone Texts Show Kerr Received Money From Marijuana Business Applicants He Voted As Mayor To Assist *from page 2*

terests involving marijuana cultivation." The indictment further states, "On or about December 22, 2016, defendant Kerr deposited \$4,000 of a \$5,000 check from Person C into defendant Kerr's Navy Federal Credit Union account. On or about June 5, 2017, defendant Kerr deposited a \$2,500 check from Person C into defendant Kerr's US Bank account. On or about April 12, 2018, defendant Kerr deposited a \$5,000 check from Person C into his US Bank account. On or about April 27, 2018, Person C gave defendant Kerr \$10,000 in cash. On or about April 28, 2018, defendant Kerr sent a series of text messages to Person C, thanking Person C for the \$10,000 and saying, in part, 'I owe you big time, you name it.' Person C responded by text message, saying, in part, 'Just returning the favor for all your help.'"

A remarkable element of the criminal scheme outlined in the indictment is the seeming nonchalance with which most of those involved in exchanging

money for political favors did so, casually and in a way that could be traced, using checks and accounts with no effort to hide what they were doing other than the somewhat puerile ruse by which David Serrano sought to represent his payments to Kerr as advances on a future lawsuit settlement, and one other exception involving Person C when on April 27, 2018 he provided Kerr with \$10,000 cash.

There was some creativity shown, however, in the way in which a payment to Kerr was made in 2018 from an applicant for a marijuana cultivation business, identified in the indictment as Person D. The money did not go directly to Kerr, but rather came through Bill Rinker, the lead mechanic in the City of Adelanto motor pool/public works division. A ruse was cooked up by which an award, ostensibly for hard work and dedication to the city was to be given to a deserving city employee. That employee was to then split the money

with Kerr. Rinker was ultimately selected as the recipient of the prize money, and he was cut a check by Person D. Rinker was then obliged to turn over half of that money to Kerr.

According to the indictment, "In or around November 2017, defendant Kerr told 'Person E,' an employee of the city, that defendant Kerr had recommended Person E for a \$25,000 award, and that defendant Kerr wanted half of that award in exchange for the recommendation. Unbeknownst to Person E at the time, the award was to be paid by Person D."

In total, according to the indictment, Kerr accepted at least \$57,500 in bribes and kickbacks from Serrano, Person C and other co-conspirators.

According to the indictment, "Richard Allen Kerr corruptly solicited and demanded for the benefit of himself and others, accepted, and agreed to accept, a thing of value, namely, money from bank accounts associated with Person A, intending... to be influenced and rewarded in connection with the passage of an ordinance authorizing the creation of medical marijuana dispensaries in the city, the expansion of a medical marijuana dispensary busi-

ness zone to include the location of Business A, and the approval of Business A as a medical marijuana dispensary."

The indictment uses similar language in pointing out that "Kerr solicited, demanded, accepted, and agreed to accept money from Person C, intending to be influenced and rewarded in connection with the passage of ordinances (1) authorizing medical marijuana cultivation, and (2) authorizing the distribution, transportation and testing of medical marijuana." The indictment said Kerr engaged in those acts of political corruption through his votes as a member of the city council and the city's cannabis dispensary permit committee.

The *Sentinel* inquired of Ciaran McEvoy, a public information officer with the U.S. Attorney's Office about the status of the others whose acts are mentioned in the indictment – David Serrano, Manny Serrano, Bill Rinker, Person C and Person D."

McEvoy said he could not speak to what was in store for them or whether they have already been charged separately or if they are cooperating with the FBI and the U.S. Attorney's Office.

"We're not prepared to go beyond what is contained in the indictment," McEvoy said.

Assistant United States Attorney Sean D. Peterson of the Riverside Branch Office is prosecuting the case under the supervision of Assistant U.S. Attorney Jerry C. Yang, the chief of the Riverside Branch Of-

fice of the U.S. Attorney's Office and Assistant U.S. Attorney Scott M. Garringer, the chief of the criminal division within the U.S. Attorney's Central District of California operations.

If convicted of all charges, Kerr would face a statutory maximum sentence of 160 years in federal prison.

## Upland Pension Obligation Bonds *from front page*

fit or previously specified, usually, but not necessarily, to build roads or structures, undertake capital improvements or construct new, expand existing or refurbish or upgrade city assets such as, for example, water resources in the form of wells, reservoirs, cisterns, aqueducts, mains or pipes. The city thereafter pays to the bondbuyers each year an installment on the debt equal to the percentage of the bonds specified when issued. Thus, a bond buyer who purchases a bond with a face value of \$100,000 at 6 percent would see a return of \$6,000 per year for the number of years that the bond is dedicated, generally 20, 25, 30 or 35 years. At the end of that dedicated time, the bond is said to have reached maturity. Upon

the bond maturing, the city pays the holder the face value of the bond. This retires the city's bonded indebtedness to that bondholder in full.

In this case the city is looking to issue bonds not to pay for tangible capital improvements or infrastructure, but to retire existing debt created by runaway pension costs. The issuance of the bonds will not address ongoing pension obligations that will continue to accrue into the future.

To issue most municipal bonds, a majority vote of a city's voters is required. There are exceptions made with certain types of bonds, such as so-called certificates of participation, certificates of obligation and pension obligation bonds.

A city can avoid having to get voter approval for participation or obligation

*Continued on Page 11*

## City Failed To Recognize A Portion Of The Site For The Villa Serena Tract Was Wetlands Before Approving The Project, Judge Rules

from page 6

“Accordingly, Upland’s decision to adopt the initial study-mitigated negative declaration in approving the project was an abuse of discretion. The failure to consider that the project may impact wetlands renders the description of the project inaccurate. This failure also forms part of the reason there is substantial evidence supporting a fair argument of biological impacts.”

Cohn wrote, “The failure to recognize that the project site may be a designated wetlands area also resulted in Upland’s failure to submit the initial study-mitigated negative declaration to any responsible or trustee agencies—a per se violation of the California Environmental Quality Act. California regulations state that all waterways of the state, including intermittent streams, are subject to the jurisdiction of the California Department of Fish and Wildlife. Under Fish and Game Code section 1602, it is illegal for an entity to ‘substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank or, any river, stream, or lake’ without first notifying and obtaining the approval of the California Department of Fish and Wildlife.”

In addressing Friends of Upland Wetlands’ contention that the project may result in significant biological impacts, Judge Cohn made a finding that a prima facie showing that such was the case had been made. He said the city council during the April 13, 2020 hearing on the project had ignored evidence to that effect.

“During the public comment period, several wildlife biologists and amateur birdwatchers noted personal observations of various wildlife species and habitats on the site,” Judge Cohn wrote. “Friends of Upland Wetlands argues that these comments by local ‘experts’ ‘completely debunked’ the conclusions in the initial study-mitigated negative declaration, and therefore, pursuant to California Environmental Quality Act Guidelines Section 15064, subdivision (g), Upland

should have required an environmental impact report. Upland and Frontier Homes, however, argue that these commenters are not ‘experts,’ and therefore their unsubstantiated opinions and comments cannot constitute substantial evidence of a fair argument because they lack credibility. Notwithstanding these comments, Upland and Frontier Homes contend Friends of Upland Wetlands’ claim fails because none of the commenters addressed or objected to Mitigation Measure BIO-1 [contained in the mitigated negative declaration], which purports to reduce the biological impacts of the project to a less than significant level. The argument ignores oral comments by one person addressing the inadequacy of the biological assessment, and thus alluding to the inadequacy of the recommended mitigation measure. Natasha Walton, a wildlife biologist and sixteen-year Upland resident, opined that the field survey conducted for the biological resources assessment was performed at the wrong time of year and failed to follow proper survey protocols. Walton stated that burrowing owls had historically been present in the basin and that suitable burrowing owl habitat had been noted in the report, but an adequate survey was not conducted. In addition, she opined that the delineation of jurisdictional waters was done at the wrong time of year because ‘everything’s dead or dormant’ in July. Walton also asserted that the California Department of Fish and Wildlife should have been consulted regarding the proper protocol for conducting an accurate survey according to the California Department of Fish and Wildlife report on burrowing owl mitigation, and that the California Department of Fish and Wildlife should have been consulted to obtain its comments on the evaluation and mitigation measures in the initial study-mitigated negative declaration.”

Judge Cohn went on. “Such technical interpretation requires an expert evaluation, but Walton stated she had expertise as a wildlife biologist, the type of expertise that would allow her to evaluate the adequacy of the biological assessment,” Judge Cohn noted. “Upland and Frontier Homes contend that Walton’s comments were prop-

erly disregarded because she did not provide any information about her credentials or education. The statutes, guidelines, and case law impose no such requirement. Walton’s expertise as a wildlife biologist is sufficient to qualify her to opine on the sufficiency of the biological assessment.”

The Friends of Upland Wetlands further contended in the petition for mandate that the initial study-mitigated negative declaration failed to adequately address the project’s adverse impacts on groundwater recharge. In his size up of the issue, Judge Cohn said the mitigated negative declaration outlined mitigation measures that took into consideration most of impacts of the project upon groundwater recharge. In one respect touching on groundwater recharge, however, he found that the mitigated negative declaration fell short.

“The initial study-mitigated negative declaration... does not explain how Mitigation Measure HYD-3 will allow the project to convert fifty-five percent of the site to impervious surfaces and substantially reduce the current containment capacity of the basin without impacting the basin’s current groundwater recharge function,” Judge Cohn wrote.

Judge Cohn rejected Friends of Upland Wetland’s contention that the project would impose traffic circulation burdens within the Foothill Knolls District.

“Friends of Upland Wetland’s traffic impact argument is moot,” he wrote.

Judge Cohn took up the plaintiffs’ contention that “the project may result in significant aesthetics impacts.” Without rendering a judgment on that contention, Judge Cohn noted, “Several residents commented that the elevations of the new homes would block mountain views of several nearby residences in the adjacent neighborhood” and that “During the planning commission meeting on January 22, 2020, the vice chair of the commission noted that comments regarding the loss of views were ‘the most thing that was repeated.’ Judge Cohn then made citation to several landmark decisions relating to the aesthetic impact of development on existing properties, including *Ocean View Estates Homeowner’s Assn., Inc. v.*

*Montecito Water District*. “In this case, the residents’ comments were based on their personal observations regarding the aesthetics in the area near the site,” Cohn wrote. “Their comments expressing ‘height, view and privacy concerns’ constitute substantial evidence supporting a fair argument that the project may have a significant aesthetic impact on the environment.”

Quoting from a decision in the case of *Georgetown Preservation Society*, Judge Cohn wrote, “Despite the subjective nature of aesthetic concerns, it is clear that the project may have a significant adverse environmental impact. Whether it likely will or will not have such an impact is a question that an environmental impact report is designed to answer.”

In his conclusion, Judge Cohn wrote, “for the reasons explained above, the petition for a writ of mandate is granted. A full environmental impact report is required because there is substantial evidence supporting a fair argument that the project site contains wetlands, and that the project may result in significant biological, noise, aesthetic, and groundwater recharge impacts. The remaining grounds for the petition are denied.”

On July 14, Judge Cohn in his courtroom heard arguments from John McClendon who was present to represent Friends of Upland Wetlands, from Ginetta Giovinco who was heard telephonically representing the city and from Stephen Larson, Jennifer Cooper and Scott Summer, also telephonically, representing Frontier Homes. Judge Cohn issued his tentative ruling, while taking the arguments under submission. He is to notify the parties of his final decision by mail.

Five days later, on July 19, Frontier Homes submitted a request for judicial notice and a motion to augment the administrative record. That document was not filed and was returned to Frontier Homes’ legal representatives by the court with the notation that such motions have to be reserved for a hearing prior to their filing. It is not clear whether or not Judge Cohn is delaying his final ruling pending a hearing date on that motion being set and the documentation being considered and the motion heard.

-Mark Gutglueck

## Upland Solons Eschew Transparency On Pension Obligation Bond Issuance

from page

certificates or for pension obligation bonds by engaging in what is called a validation process. This entails the city lodging a validation complaint in a local court, inviting anyone of standing or with an interest in the matter, which generally means the city’s residents, to contest the proposed issuance of the bonds by stating reasons why they should not be issued. Pleadings and hearings then ensue before a judge who ultimately determines whether the bonds should or should not be issued. The public is given notice of the validation action by an obscure ad in a local newspaper. If no one comes forth to contest the matter in court within 30 days, the city is then at liberty to make the bond issuance.

This week, secretly so as not to alert Upland residents, the Upland City Council at its Monday night meeting voted to hire J.P. Morgan Securities LLC and Stifel, Nicolaus & Company, Incorporated to serve as the managing and co-managing underwriters, respectively, for the city’s proposed issuance of pension obligation bonds. The council did so without any discussion whatsoever, as the vote to retain the underwriters had been placed on that evening’s consent calendar.

The consent calendar by tradition is reserved for routine and non-controversial matters. Multiple items are strung together on the consent calendar, and instead of being considered and voted upon separately, they are taken up collectively without any comment or discussion and are voted upon in one fell swoop with a single vote.

By quietly voting on the matter relating to the hiring of the bond underwriting team, the council sidestepped informing the public about what it was doing.

Three days later, on Thursday August 12, the city again quietly filed a summons naming no single individual but a collective, that being “all persons.”

“You are being sued,” the summons to participate in the validation process reads in part. “You have 30 calendar days after this

summons and legal papers are served on you to file a written response.” That service will consist of a newspaper notice that is anticipated to be published in the next few days.

If no challenge to the validation is made within the 30-day timeframe, no further opportunity to stop the bond sale will be available to Upland’s residents, who will bear the cost of servicing the bond debt at the percentage specified on the bonds and ultimately by paying the full amount of the issuance upon the bonds reaching maturity.

In the same way they have hidden the move toward the issuance of the bonds and the validation proceeding from Upland’s residents, Upland officials have been parsimonious with regard to information about the bonds themselves.

A document issued by the city in March 2021 indicated the city’s unfunded pension liability - that is, its currently outstanding debt to cover the payments it must make to the California Public Employees Retirement System to cover the cost of the pensions paid to currently retired former Upland City employees and the anticipated cost of paying current employees - had reached \$130,186,277. That amount had climbed from \$120,920,721 as of June 30, 2020, which was nearly \$9 million more than the \$112,039,675 it had been at the midway point of fiscal year 2019-20 on December 31, 2019, which was up more than \$12 million from \$99,976,917 as of June 30, 2019. In the last two years, Upland’s pension debt escalation has been historically steep. Over the previous seven years, the city’s pension debt had grown by roughly \$11 million. Upland’s unfunded pension liability was \$88,994,066 as of June 30, 2012.

When city officials took up the question in earnest last year about what it was going to do regarding the escalating pension costs that are eating up more and more of the city’s operating budget each succeeding year, they turned to Urban Futures, which offers municipal management and financial consulting services, for advice on possible solutions. Urban Futures, which formerly employed then-Assistant City Manager Steven Parker who is now serving in the role of acting city manager, pushed the

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## Hit & Run Puckett Rang Up Six Speeding Tickets In Four Years from page 9

resigned in February 1999 as Flint's finance director. The following month, after Puckett had been replaced as finance director by Matthew Grady, a close examination of the city's books showed misrouting of certain tax money. First it was learned that the city had diverted over \$1 million in property tax payments it should have kept to other local governmental entities such as the Flint School District and a local airport. Then it was discovered that Flint had withheld from the State of Michigan approaching \$4 million in industrial facility taxes over a three-year period while Puckett was in charge. In Michigan, industrial facility fees are substitutions for property taxes paid by companies.

In February 1999 Puckett departed the Wolverine State and moved to California, quickly landing a job as the finance director in Costa Mesa.

For a decade, Puckett did well in the Orange County city. He was active in professional organizations for those employed in the financial world and in the arena of public agency finance, such as the California Municipal Treasurers Association. In the summer of 2009, he had been elected to assume the presidency of that organization later that year when precipitously, in August 2009, he was placed on leave by the City of Costa Mesa over some unspecified irregularity. City officials would not disclose what the issue was, but said it had "nothing" to do with any "financial improprieties." Puckett resigned his position in September 2009 and also resigned as a member of the California Municipal Treasurers Association. As Puckett was the president-elect of the association, its executive director had to scramble to find his replacement.

Puckett wandered in the desert for some time thereafter, but ultimately was able to market his skill set, landing the position of finance director with the City of Petaluma in the San Francisco Bay Area in November 2010. But after being there less than two months, Puckett

precipitously resigned in late December 2010, effective January 7, 2011, citing "family reasons."

Once back in Southern California, Puckett went to work almost immediately with Apple Valley, revealing why he had left Petaluma in the lurch.

At the end of 2017 when he left Apple Valley, Puckett, having achieved the age of 55, retired. At the time of his retirement, Apple Valley was paying him \$217,486 in yearly salary, \$22,282 in other pay, and benefits of \$92,948.95 for a total annual compensation of \$332,716.95.

Under the terms of his participation in the California Public Retirement System, Puckett was eligible to begin drawing a rather substantial pension.

In 2020 he receive an annual pension of \$136,731.36 through the California Public Employees Retirement System, based on his 20 years as a public employee in California. The *Sentinel* was unable to find the pension Puckett is receiving as a former employee with the Michigan cities of Flint and Eastpointe.

As a California Public Employees Retirement System pensioner, Puckett can, if he chooses, work up to 960 hours – equal to 24 40-hour weeks – per year with a public agency. Previously, Puckett, Puckett augmented his retirement stipend by working as the interim finance manager with the City of West Covina.

In April, interim Barstow City Manager Jim Hart submitted to the city council a "resolution of appointment and employment contract for Marc Puckett to serve as interim finance director."

In the executive summary for that resolution, Hart wrote, "The city is in need of an interim finance director. The interim city manager recommends the city council approve the attached resolution and employment agreement to appoint Marc Puckett as interim finance director. Mr. Puckett has approximately 33 years of public finance experience and has served as a finance director for more than 20 of those. Additionally, Mr. Puckett has been a leader in the local chapter of the Municipal Finance Officers Association. He most recently completed an interim assignment with the City of West Covina. If

approved, Mr. Puckett will serve as interim finance director, until September 30, 2021 or the recruitment for a permanent finance director is concluded."

Puckett is being paid a monthly salary of \$14,159.57, which translates to \$81.69 per hour, based on his working 173.333 hours per month.

Of note is that starting in 2011, when Puckett was 48 years old, he began a spree of traffic law violations that might best be described as typical of an adolescent

## Upland Councilmembers Unwilling To Say If Their Advisor Has A Conflict Of Interest from page 5

city council unrelentingly toward the option of issuing pension obligation bonds as a ploy to refinance the pension debt at a lower rate than the 7 percent expected return on investments that the California Public Employees Retirement System functions under. Undisclosed was that after the city council accepted Urban Futures' advice and upon resolving to issue pension obligation bonds, it committed to pay Urban Futures \$62,500 when the issuance of the bonds takes place. In this way the city council is relying upon an advisor with a financial stake in the advice it is providing to the city and the city council.

The Government Finance Officers Association has issued advisories against pension obligation bonds, calling them risky gambles with public money, saying strategies involving them are akin to using a newly-issued credit card to pay off existing credit card debt.

Prior to the 2020 election, then-Third District city council candidate Carlos Garcia and then-treasurer candidate Greg Bradley issued cautions to the city council about the advisability of utilizing pension obligation bonds to come to terms with Upland's ongoing pension debt.

Garcia said the city should not "blindly" rely on pension obligation bonds as a solution to overcome the pension funding crisis, and he called upon city officials to think through the consequences of issuing bonds before doing so.

Bradley said, "I would insist that we have a plan to stop adding new debt be-

fore we consider a bond to push off old debt. You can't get out of debt while you're adding new debt."

Both Garcia and Bradley were elected. Now in office, they have, under heavy lobbying by Urban Futures, essentially gone along with Parker in his agenda to issue the bonds. Notably, much of the pension obligation bonds strategy in Upland remains shrouded in mystery. Different figures as to the size of the issuance have been thrown around. A city document gives Upland's unfunded pension liability as of March of this year as \$130,186,277. Urban Futures managing director Julio Morales pegged Upland's outstanding pension liability at \$120 million, and at one point he indicated the plan was to have the city issue bonds in that amount. Bradley, however, told the *Sentinel* that the initial issuance would only be \$10 million, to be followed by future issuances.

Another issue not fully put to rest is whether or not the city will utilize the proceeds from the sale, borrowed at a low interest rate, to make investments that will hopefully provide returns at a much higher interest rate, and then use the earnings generated as a consequence of the difference to pay down the city's pension debt. At one point, city officials said that was the plan. More recently, however, word is that the city will issue the bonds and then turn the proceeds over to the California Public Employees Retirement System to invest them. City officials are in no hurry to clear up that discrepancy.

Available city documents state that Best Best & Krieger, the law firm with which Upland City Attorney Steve Deitsch

victed of speeding in excess of 65 miles per hour in San Bernardino County. In September of 2013, he was ticketed for speeding in excess of 70 miles per hour. The matter was resolved with his paying a \$426 fine and attending traffic school. In July 2014, Puckett was ticketed for speeding in excess of 65 miles per hour. With the loss of his license on the line if he were convicted, he retained attorney James Edward Perron to represent him. Perron engaged in a bit of judge shopping, continuing the case and filing an affidavit of prejudice against one of the judges. He continued the case more than once and on the trial date, the officer who tick-

is a partner, will serve as bond counsel with regard to the bond issuance, and receive \$45,000 for doing so. Another city document states that the law firm of Stradling Yocca Carlson & Rauth will receive \$36,500 for serving as disclosure counsel with regard to the issuance of the bonds. Unclear, however, is whether the figures quoted pertain to an issuance of \$10 million in bonds as referenced by Bradley, the \$120 million referenced by Morales or the \$130,186,277 in unfunded pension liability the city had accrued as of five months ago.

Bradley told the *Sentinel* that with historically low interest rate of 2.6 percent at present, if the city is to go the pension obligation bond route it would be best to take advantage of that rate, which he said is likely to creep up in the upcoming months, and issue \$130 million worth of bonds at once. Bradley acknowledged, however, that he did not know if that was going to be the case. He said that even though he was the city's treasurer and the node through which all financial information pertaining to the city should flow, Parker and Urban Futures had not made clear to him precisely what the strategy is or the timing on the issuances.

Neither Garcia nor Councilwoman Janice Elliott was able to tell the *Sentinel* whether the quoted bond counsel and disclosure counsel fees for, respectively, Best Best & Krieger and Stradling Yocca Carlson & Rauth were for a \$10 million bond issuance or a \$130 million issuance. Neither Garcia nor Elliott responded to whether they believed

etted Puckett failed to show up and the matter was dismissed. In November 2014, Puckett was once again ticketed for speeding in San Bernardino County. He again retained Perron, who, working his magic, had the charge changed to coasting out of gear going down the Cajon Pass. Perron entered a no contest plea on Puckett's behalf. Puckett was fined \$534. In December 2014, Puckett was ticketed for speeding. In April 2015, after the timeframe within which an accumulation of speeding convictions would trigger Puckett's loss of driving privileges had elapsed, Perron entered a no contest fee on Puckett's behalf. Puckett was fined \$559 and attended traffic school.

-Mark Gutglueck

Urban Futures had involved itself in a conflict of interest by serving in the capacity of guiding the city on the advisability of issuing pension obligation bonds as a strategy to come to terms with the city's pension debt and then taking on an assignment of providing ancillary professional services relating to the issuance of pension obligations for which it would receive fees. Both Garcia and Elliott balked at explaining why the city council was consistently putting all of its action relating to the issuance of pension obligation bonds on the council's consent calendar, as it did this week, on May 10 and on April 26. Nor would they say if they truly believed the issuance of \$130 million in pension obligation bonds without the approval of Upland's voters qualified as being noncontroversial.

Elliott said she had "tremendous confidence" in Parker, and he was doing "an outstanding job as our city manager."

The *Sentinel* spoke with Upland City Clerk Keri Johnson about who at City Hall makes decisions about what items are reserved for the consent calendar.

"The city manager has the final say," she said.

Asked specifically who had put the issues relating to the bond issuance on the consent calendars for the April 26 meeting, the May 10 meeting and this week's meeting, Johnson said, "If you are asking where agenda items are placed, you really should be speaking with the city manager's office."

-Mark Gutglueck